

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)

STATE OF MISSOURI, ex rel.,)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General of the State)	
of Missouri,)	
)	
Plaintiff,)	Case No.: 994-1415
)	
vs.)	Division 2
)	
CHARLES LEWIS MICHELS, et al.,)	
)	
Defendants.)	

**THE STATE'S MOTION FOR SHOW CAUSE ORDER
AND JUDGMENT OF CRIMINAL CONTEMPT
AGAINST DEFENDANT CHARLES LEWIS MICHELS**

Charles Lewis Michels (“Michels”) has repeatedly and flagrantly violated the terms of the Consent Judgment (“Judgment”) this Court entered against him on November 13, 2000. Among other things, the Judgment prohibits Michels from operating tow trucks in commerce and requires him to have proper paperwork for any vehicle to be crushed for salvage. The Attorney General recently learned that Michels continues to own and operate tow trucks. He owns a salvage lot on which stolen vehicles have routinely been found. Michels could not produce any paperwork for most of the vehicles found on his lot during a recent inspection. One such vehicle was even found in Michels’s crusher.

Michels’s only concession to this Court’s authority has been a transparent attempt to hide his continued involvement in prohibited practices by operating with business associates. In short, Michels is in deliberate and contumacious violation of this Court’s order, and a finding of criminal contempt is necessary to vindicate the dignity of the Court. Accordingly, the State, by the Attorney General of the State of Missouri, hereby asks this Court to enter a judgment of

criminal contempt against Michels for his violations, sentence Michels to a term of confinement in the city jail, issue a stronger injunction to prevent further wrongful conduct, and order Michels to pay civil penalties.

I. BACKGROUND

The following is a summary of the history of Michels's business practices and the Attorney General's consumer fraud lawsuit which resulted in the entry of the Judgment (attached as Exhibit A). Michels and his wife, Deanna Michels, operated an automobile towing and salvage business. The defendants did business under various names, including "American Towing & Salvage," "American Towing," "American Recycling," "Metro Towing," and "Metro Towing & Salvage," among others. The Attorney General investigated Michels, his wife, and their businesses, and determined that they had committed various unfair and unlawful practices. The heart of the unlawful conduct was unscrupulous towing practices: nonconsensual towing of consumer vehicles in violation of Missouri statutes, charging unlawful (and at times unconscionable) fees to consumers, and requiring consumers to execute receipts falsely stating they had authorized towing of their vehicles when in fact no such towing had been authorized.

The Attorney General filed a Petition in this Court alleging violations of Missouri towing statutes and violations of the Missouri Merchandising Practices Act ("MMPA"). The MMPA claims alleged both deceptive practices and unfair practices, both of which constitute consumer fraud. With the consent of all parties, the Court entered judgment in favor of the Attorney General on these claims. The Judgment included permanent injunctive relief, payments for restitution, costs, and civil penalties, and a finding that "Defendants do not contest the Attorney General's allegations that Defendants towed and stored certain motor vehicles in violation of Missouri's towing and storage statutes[.]"

II. PERTINENT PROVISIONS OF THE JUDGMENT

This Court permanently enjoined Michels from the following conduct in, to, or from the state of Missouri:

1. operating a tow truck or wrecker in Trade or Commerce;
2. engaging in the advertisement, sale, or offer for sale of towing services;
3. engaging in the advertisement, sale, or offer for sale of storage services for any vehicle that is not in the possession of such Defendant at the time of execution of this Consent Judgment;
4. serving as an officer or director of, or having any managerial, supervisory, or ownership role in relation to, any enterprise that engages in the activities referenced in paragraph IV.A.1 through IV.A.3 above;
5. advertising, offering for sale, selling, or transferring any motor vehicle, unless such Defendant has obtained title to such vehicle, a junking certificate, or written authorization from the titled owner of such vehicle, and such Defendant maintains a copy of such title, junking certificate, or written authorization available for inspection by the Attorney General's Office; or
6. crushing any motor vehicle unless such Defendant has obtained title to such vehicle, a junking certificate, or written authorization from the titled owner of such vehicle, and such Defendant maintains a copy of such title, junking certificate, or written authorization available for inspection by the Attorney General's Office.

Judgment at § IV.A., p. 7. The Court further ordered Michels to remove all signage referring to “American Recycling, American Towing, American Towing & Salvage, BBC Towing, Crash Towing, Metro Towing, and Metro Towing & Salvage.” *Id.* at § IV.C., pp. 8-9.

The Judgment also provides:

A violation of any of the terms or conditions of this Consent Judgment shall constitute a violation for which civil penalties of not more than Five Thousand Dollars (\$5,000.00) per violation may be sought against Defendants by the Attorney General pursuant to Section 407.110. Furthermore, if Plaintiff believes any Defendant has violated any provision of this Consent Judgment, the Attorney General is not constrained from initiating further investigation or legal proceedings against such Defendant, including actions for criminal and/or civil contempt of court and those procedures set out in Section 407.020, et seq.

Id. at § VI.A., p. 11. The Judgment expressly provides that the Court retains jurisdiction for purposes of enforcing the Judgment. *Id.* at § III.B., p. 5..

III. MICHELS'S RECENT BUSINESS PRACTICES

The Attorney General has recently learned that Michels is still in the business of towing, salvage, and wrecking. Michels owns and operates a salvage lot located at 1800 N. Vandeventer, St. Louis, MO 63106, operating under the name of "American Salvage." The ostensible business of this lot is junked cars, which Michels obtains and then crushes to sell for scrap metal. Michels operates the lot in conjunction with various other persons with whom he has business relationships. One such person is Samuel Ross ("Ross"). Ross subleases a portion of Michels's lot, purportedly in order to operate a separate towing business. Ross operates this business under the name of "Metro Towing," a name previously used by Michels (and not currently registered to Ross or any other person). Ross and Michels also work with Richard Johnson, who has another tow truck that has been seen on the lot. Ross shares an office with Michels on the lot. Ross, like Michels, does not have a license to operate a towing business. Moreover, Ross likely could not obtain such a license because he is a two-time convicted felon.

St. Louis City auto theft detectives have encountered several suspicious (and in some cases unlawful) practices occurring at Michels's lot. On multiple occasions between 2001 and the present, detectives have heard statements and received inquiries concerning the presence of stolen or missing consumer vehicles on Michels's lot. Police officers have actually located at least five cars previously reported as stolen on Michels's lot. The only plausible explanation for the presence of such cars on Michels's lot is that they were towed there. Detectives have observed tow trucks on Michels's lot, and have obtained a copy of a lease agreement whereby Demetrice Jones leased a tow truck to Michels. Detectives have also observed signs indicating

that Michels is selling parts from automobiles on the lot. Michels does not have a license to operate an auto parts business.

On May 22, 2003, detectives visited Michels's lot after learning Ross had nonconsensually towed thirteen vehicles to the lot. Ross's conduct was unlawful in several respects: he towed the vehicles without a license, he failed to comply with police procedures for nonconsensual tows, and the form on which he identified the towed vehicles indicated that they had been towed from a non-existent address. While inspecting the lot, the detectives located two vehicles reported as stolen.

On May 23, 2003, the detectives returned to Michels's lot and found that the two stolen cars were no longer present. Neither Michels nor Ross would provide an explanation. Michels and Ross stated that Ross operates a separate towing business and that he tows his vehicles only to the specific portion of the lot that Ross subleases. However, the detectives subsequently located other automobiles, towed by Ross, on the portion of the lot not subleased to Ross.

Because of the suspicious facts described above, the detectives began inspecting every car on the lot and demanding that Michels produce paperwork proving his ownership of or right to possess each vehicle. Michels was unable to produce any records for 49 vehicles - over 80 percent of the vehicles on Michels's lot. One of these vehicles was found in the crusher and was already partly destroyed. Also among the 49 vehicles were two additional cars reported as stolen and two forklifts with the Vehicle Identification Number ("VIN") plates removed, in violation of federal law. Michels admitted owning these vehicles, and claimed that some other person had removed the VIN plates.

The detectives also located a tow truck, which Michels admitted owning and using in commerce. Michels stated to the detectives that he is permitted by this Court's injunction to use

the tow truck for voluntary tows of abandoned vehicles, as long as he is asked to tow the vehicles by the owners.

IV. MICHELS'S BUSINESS PRACTICES VIOLATE THE JUDGMENT

Michels has violated the terms of the Judgment in at least the following respects.

A. Michels Has Operated a Tow Truck in Trade or Commerce, Has Engaged in the Sale of Towing Services, Has Supervised Other Persons Engaged in Such Sale, And/Or Has Acted in Concert With Such Persons, Violating the Injunction Against Him.

Michels has plainly violated the heart of this Court's order (as set forth in Injunction items 1, 2, and 4) on multiple occasions. He admitted owning and operating a tow truck, and falsely claimed that he could engage in towing of abandoned vehicles without violating the injunction. Michels leased another tow truck from Demetrice Jones; given the generally low aesthetic value of tow trucks, it may be presumed that Michels leased this tow truck for the purpose of using it in trade or commerce. Michels also does business with other persons who operate tow trucks in commerce, violating the "acting in concert" prohibition of the injunction. At least one such person - Ross - has engaged in exactly the sort of behavior that occasioned the Attorney General's lawsuit against Michels: unlawful and unfair towing practices. The repeated presence of stolen vehicles on Michels's lot also testifies to Michels's continued involvement in improper towing procedures.

B. Michels Has Possessed, Sold, And/Or Junked Motor Vehicles Without Maintaining Proof of Title, Junking Certificate, or Owner's Authorization, Violating the Injunction Against Him.

Michels was unable to produce appropriate records to justify his possession of most of the vehicles on his lot. Michels's current principal business - at least ostensibly - is salvage and the sale of parts. It is obvious from his lackadaisical recordkeeping that Michels routinely crushes vehicles to which he cannot prove he has title (or the right to junk), and routinely sells parts from vehicles that he cannot prove he owns. Michels admitted to police detectives that he had no

records for over 80 percent of the vehicles on his lot, including one vehicle that was in the process of being crushed. This blatantly violates Injunction Items 5 and 6. It also presents a serious risk to consumers in the St. Louis area - the lack of paperwork gives rise to a strong suspicion that Michels routinely is involved in the unlawful towing (and eventual scrapping) of vehicles taken from innocent consumers.

C. Michels Has Committed Various Other Independently Wrongful Acts Which, Combined With His Injunctive Violations, Demonstrate Willfulness and Contumacious Behavior.

Michels has engaged in other behavior that, to say the least, leaves serious question as to his status as a legitimate businessman. Most prominent is the presence of stolen vehicles on his salvage lot. Michels also has violated Missouri law by selling auto parts without a license and by working with Ross (who engages in nonconsensual towing without a license). Michels has further violated federal law by possessing vehicles with VIN plates removed, with the admitted knowledge that such plates have been removed. This conduct arguably might not violate this Court's injunction, but should be more than sufficient to convince the Court that Michels is a deliberate and wilful lawbreaker. He will pose a substantial threat to consumers so long as he has **any** involvement with towing, auto salvage, and the like.

Also worthy of mention is Michels's continued use of names that he was specifically required to abandon by this Court's order. His business associate, Ross, operates under the name "Metro Towing," an entity for which Michels was ordered to destroy all signage by this Court. Michaels currently does business under the name "American Salvage," which is strikingly similar to names he was required to abandon, including "American Recycling" and "American Towing & Salvage." While these may seem like a trivial part of the Court's order, the bottom line here is a fundamental point: very little about Michels's business practices appears to have changed since 2000.

When Michels's wrongful conduct is coupled with his injunctive violations, the conclusion is inescapable: Michels has not violated the terms of the Judgment by accident. He simply has demonstrated a refusal to cease his unlawful and dangerous conduct, instead making only token efforts to conceal his activities through the involvement of other persons. Michels's conduct amply fits within any reasonable definition of wilfulness.

V. LEGAL ANALYSIS FOR CRIMINAL CONTEMPT

The conduct described above constitutes criminal contempt. A court has the power to punish for criminal contempt any person guilty of "[w]illful disobedience of any process or order lawfully issued or made by it [the court]." Mo. Rev. Stat. § 476.110(3). **All that must be shown to support a finding of criminal contempt is (a) the defendant's actual knowledge of the Court's order, and (b) willful violation its terms.** *Reeves v. Moreland*, 577 S.W.2d 125, 127 (Mo. App. E.D. 1979) (citations omitted).¹

The willfulness that must be shown for criminal contempt is an intent to do the prohibited act with a careless and imprudent disregard for the power and authority of the court. *Chemical Fireproofing Corp. v. Bronska*, 553 S.W.2d 710, 717 (Mo. App. E.D. 1977). It is not necessary to establish an intent to defy the court. *Id.* Intent can often be difficult to prove

¹ Contempt falls into two categories: civil and criminal. The distinction is reflected in the content of the judgment of contempt. Criminal contempt is intended to punish and preserve the dignity of the court's orders, and civil contempt is intended to coerce a party into compliance and thereby aid the litigants. The difference in proof between civil and criminal contempt is that in civil contempt, it is only necessary to show a violation, and in criminal contempt it must be shown that the violation was willful. There are two subcategories of both civil and criminal contempt: direct or indirect contempt. Direct contempt is that which occurs in the presence of the judge, and therefore the order of contempt can be summarily imposed. Indirect contempt occurs outside the presence of the judge, and some process is due before a judgment of contempt is imposed. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 578-79 (Mo. banc 1994); *State ex rel. Mo. Dam and Reservoir Council v. Rocky Ridge Ranch Property Owners Ass'n*, 950 S.W.2d 925, 928-29 (Mo. App. E.D. 1997); *McMillian v. Rennau*, 619 S.W.2d 848, 850-51 (Mo. App. W.D. 1981); *Chemical Fireproofing Corp. v. Bronska*, 553 S.W.2d 710, 716-17 (Mo. App. E.D. 1977); Mo. S. Ct. R. 36.01. This case involves indirect contempt. The fact that the contempt is indirect or direct does not affect its seriousness.

with direct evidence; circumstantial evidence can support a judgment of criminal contempt. *Reeves*, 577 S.W.2d at 128.

The purpose of the criminal contempt proceedings is to preserve the power and vindicate the authority and dignity of the Court, and to provide a means to punish those who choose to disregard its orders, and to deter future defiance. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 578-79 (Mo. banc 1994); *Chemical Fireproofing*, 553 S.W.2d at 715. The disobedience of a valid judgment or court order is such interference with the administration of justice as to constitute contempt. Court orders must be respected by full obedience. The criminal contempt power is based not only in rules and statutes, but also stems from the court's inherent power to protect the judicial system established by people as the proper and official method of settling disputes. *State ex rel. Picerno v. Mauer*, 920 S.W.2d 904, 910, 912 (Mo. App. W.D. 1996).²

VI. MICHELS'S CONDUCT CONSTITUTES CRIMINAL CONTEMPT

Applying the facts described above to the law, Michels has engaged in criminal contempt: he violated the terms of the Judgment with a careless and imprudent disregard for the power and authority of the court.

² Procedures for criminal contempt are found in Missouri Supreme Court Rule 36.01. The contempt can be prosecuted by the prosecuting attorney or, as is more typically done, the appointment by the court of the plaintiff's attorney for that purposes. Rule 36.01(b); *Curtis v. Toezer*, 374 S.W.2d 557, 584-85 (Mo. App. E.D. 1964). Although the Attorney General presumably has prosecutorial power to proceed without appointment, the Attorney General filed a motion for appointment to eliminate any ambiguity.

Technical pleadings are not required in contempt proceedings. *Curtis*, 374 S.W.2d at 569. Nor does the alleged contemnor have all the rights of a criminal defendant. *Chassaing*, 887 S.W.2d at 580. A notice of contempt need not have the specificity of an indictment--it is adequate if the alleged contemnor is sufficiently advised of the actions constituting contempt. *Mechanic v. Gruensfelder*, 461 S.W.2d 298, 309 (Mo. App. E.D. 1970). Here, this show cause motion is extremely detailed and amply provides the required notice. All of the required procedures for criminal contempt are being followed here.

Michels indisputably had knowledge of the Judgment. There was nothing confusing, unreasonable, or impracticable about his obligations. To take just one of many examples cited above, language prohibiting Michels from “operating a tow truck or wrecker in Trade or Commerce” is neither ambiguous nor open to interpretation. Michels knew he was not supposed to operate tow trucks, yet continues to do so. Michels knew he was supposed to have proper paperwork for the vehicles on his lot, yet has failed to do so. Michaels knew that he was obligated to stay out of the towing business, yet has employed only transparent methods to hide his own involvement in exactly that field of work.

None of these acts were undertaken by accident. One does not accidentally misplace paperwork for nearly all of the vehicles on a lot. One does not accidentally lease and operate a tow truck. One does not accidentally become the possessor of as many stolen vehicles as Michels has. Michels is in willful and criminal violation of this court’s order. His conduct should not be treated as mere civil contempt. Michels does not need an inducement to bring him into compliance. Rather, he needs to be punished for his deliberate and contumacious acts in contravention of this court’s authority, and the Court should strengthen its order to assure that such acts will not take place again.

VII. MICHELS SHOULD BE IMPRISONED FOR HIS CONTEMPT, AND THE COURT SHOULD STRENGTHEN ITS INJUNCTION TO PREVENT FURTHER WRONGDOING.

The Court can commit the defendant to jail for criminal contempt. Mo. Rev. Stat. § 526.220; *Houston v. Hennessey*, 534 S.W.2d 52 (Mo. App. E.D. 1975) (court sentenced defendant to one year confinement in county jail for violating temporary injunction). There is no set sentence in the statutes; the punishment for criminal contempt is left to the discretion of the

court imposing it. *Ryan v. Moreland*, 653 S.W.2d 244 (Mo. App. E.D. 1983).³ The purpose of confinement is punishment and to deter future violations and vindicate the authority of the court. *Chassaing*, 887 S.W.2d at 578.

Michels deserves jail time. Michels has deliberately ignored the authority of this Court. Moreover, he has done so in a fashion that creates great risk for consumers and represents exactly the same behavior for which he was originally sued by the Attorney General. Monetary or other lesser sanctions, alone, are insufficient to punish his wrongful conduct. The appropriate punishment for his contumacious conduct is to put him in jail. Perhaps after enough time in jail, he will gain an appreciation for the authority of this Court and the importance of obeying the law.

The Court should also impose more stringent injunctive relief. Mo. Rev. Stat. § 407.100 provides that the Court “may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of,” acts in violation of the statute. Since Michels has demonstrated that the Court’s previous injunction did not keep him away from consumer fraud, a stronger injunction is now appropriate and necessary. The Court should ban Michels from all business involvement with automobiles, towing, salvage, parts, and wrecking, including any line of work that would give him any opportunity to obtain vehicles from innocent consumers in unfair or deceptive fashion.

Finally, pursuant to the Judgment, the Court is authorized to impose civil penalties of up to \$5,000 for each violation of the injunction. The Court should impose an appropriate monetary penalty sufficient to penalize Michels for his multiple violations.

³Note, however, that because contempt is punishable only by confinement in the county jail and not by commitment to the Department of Corrections, the maximum permissible sentence is probably one year. *See State ex. rel. Robinson v. Hartenbach*, 754 S.W.2d 568, 569 (Mo. *banc* 1988); Mo. Rev. Stat. § 558.011. Note also that a defendant is entitled to a jury trial if the Court contemplates imposition of a penalty of more than six months imprisonment. *Moreland*, 653 S.W.2d at 248.

CONCLUSION

Charles Lewis Michels should be adjudged in criminal contempt, and he should be ordered committed to the St. Louis City jail. The Court should also impose an appropriate fine and strengthen its injunction to ban Michels from all business involvement with automobiles, towing, salvage, parts, and wrecking, including any line of work that would give him any opportunity to obtain vehicles from innocent consumers in unfair or deceptive fashion. If the Court contemplates a jail term of longer than six months, Michels should receive a jury trial on these allegations.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

Jake Zimmerman, #52464
Assistant Attorney General
Laclede Gas Building
720 Olive Street, Suite 2150
St. Louis, MO 63101
Ph: (314) 340-6816
Fax: (314) 340-7957
Attorneys for Plaintiff